

BACKES ELK GAME FARM APPLICATION FINAL ENVIRONMENTAL ASSESSMENT

MONTANA ENVIRONMENTAL POLICY ACT (MEPA) PROCESS

The Montana Department of Fish, Wildlife and Parks (FWP) is required to perform an environmental analysis in accordance with MEPA for "each proposal for projects, programs, legislation, and other major actions of state government significantly affecting the quality of the human environment" [Administrative Rules of Montana (ARM) 12.2.430]. FWP prepares environmental assessments (EA) to determine whether a project will have a significant effect on the environment. If FWP determines that a project will have a significant impact that cannot be mitigated to a minor impact, the agency will prepare a more detailed environmental impact statement (EIS) before making a decision. If the agency determines that a proposed project will not have a significant impact, or that the impact can be mitigated to minor or none, the agency may make its licensing decision based upon the results of the EA and criteria established under Montana game farm statute Montana Code Annotated (MCA) Title 87, Chapter 4, Part 4.

Mitigation measures may be considered in FWP's analysis as a means to reduce the impact(s) of a game farm to a level below significance. FWP may also recommend mitigation measures to reduce impacts that are considered minor.

The FWP prepared a Draft EA for the proposed Backes game farm which identified no significant impacts from the Proposed Action that could not be mitigated. The Draft EA was released for public review and comment July 3, 1997. Public comments were accepted through July 24, 1997. The Draft EA, as modified herein, is hereby approved as the Final EA. This Final EA for the proposed Backes game farm contains a summary of the Proposed Action, a description of the affected environment, and potential consequences of the Proposed Action, all of which are described in additional detail in the Draft EA which is adopted in this Final EA. This document also includes required mitigation measures, a summary of public comments with FWP's responses, the conclusion of the EA, and an analysis of the impact of imposed stipulations on private property.

PROPOSED GAME FARM APPLICATION

The FWP received an application for an expansion to an existing game farm license from Gerri Backes on March 13, 1997. On April 13, 1997, FWP accepted the application as complete which initiated a 120-day review and decision period.

The proposed game farm is located approximately 30 miles southwest of Kalispell in Flathead County, Montana. The Proposed Action provides for a 28-acre fenced game farm pasture and a quarantine facility that would be separated from the game farm pasture by a short distance. Department of Livestock (DoL) has approved a temporary quarantine plan that would permit the Backes game farm to quarantine their elk at an off-site DoL-approved quarantine facility within a FWP-licensed elk game farm. The planned on-site quarantine facility would enclose an area of approximately 16,900 square feet (0.4 acres), allowing 30-feet between the quarantine enclosure and the game farm perimeter fence. On-site quarantine facility plans for the proposed Backes game farm are currently under review by DoL.

The proposed game farm would initially stock 11 elk with the option to manage up to 20 elk. The applicant would breed, sell and dispose of game farm elk in accordance with Montana game farm and disease control requirements stipulated in Title 87, Chapter 4, Part 4 MCA and Title 81, Chapter 2, Part 7, MCA.

Fence construction would be in accordance with requirements of FWP under ARM 12.6.1503A unless a waiver is sought by the Applicant and granted by FWP to construct a game-proof fence of an alternative design. The application does not provide enough information for the department to make this determination at this time. The applicant would breed, sell and dispose of game farm elk in accordance with Montana game farm and disease control requirements stipulated in ARM 12.6. Subchapter 5.

The proposed game farm area is currently leased by Gerri Backes from John McKinnon and John L. Santa on an annual lease that may be terminated by either party at any time. The lease agreement is dated February 28, 1997. The applicant does not reside at the site of the game farm but has provided written confirmation during the public comment period stating that a caretaker will be located on-site 24-hours a day (Appendix A). The name, address and phone number of the caretaker should be provided to FWP.

AFFECTED ENVIRONMENT

The 28-acre proposed game farm area is located on relatively flat pasture/grass rangeland. A small portion of the proposed game farm site is forested. The game farm site is located near the confluence of an unnamed creek and Bear Springs Creek with the Pleasant Valley Fisher River. The unnamed creek extends between the proposed quarantine and game farm areas. A narrow wetland corridor exists along portions of the unnamed stream channel.

Elk, white-tail deer, moose, black bear and mountain lions inhabit the general area. All species are capable of entering the enclosure. This area is also seasonally used by waterfowl and shorebirds.

The principal land use of the proposed game farm area and vicinity is a combination of agricultural pasture land and residential development. The proposed game farm is consistent with existing land uses. The area is not zoned for a specific use and is currently utilized by wild game.

IMPACTS AND MITIGATION MEASURES

Impacts to Vegetation and Soil Resources

The Proposed Action would result in soil compaction due to the higher clay content of the soil, trampling of vegetation, seasonal disturbance in spring and fall due to use of the pasture under high soil moisture conditions, all of which would result in vegetation degradation over time. Most trees accessible to the game farm elk would eventually die due to bark loss from elk browsing and rubbing.

Depending on stocking rate and handling of elk fecal matter, minor to heavy impacts to fertility levels in the soil may occur due to the slow infiltration and drainage characteristics of the soil resulting in a decrease in vegetative cover. Degenerating pasture conditions within the enclosure would result in lower productivity of existing vegetation, soil erosion, and an increase in the amount of bare ground for weedy species to populate. Vegetation outside of the game farm enclosure would experience minor to no impacts from the Proposed Action.

Impacts to Water Resources

Runoff from the 28-acre area could reach the unnamed creek adjacent to the game farm during major precipitation events. Due to the relatively small area considered for the Proposed Action, any impacts that would occur due to erosion and runoff are considered to be minor.

Domestic elk fecal matter and nutrient-enriched water could affect the quality of groundwater and surface water in the vicinity of the game farm, primarily during periods of snow melt and major precipitation events. The proposed passageway between the game farm area and quarantine facility would allow direct access of domestic elk to the unnamed creek. Repeated use of this passageway to move elk would cause increased stream bank and bed erosion and sedimentation. Due to the small passageway area, impacts to wetlands adjacent to the stream are expected to be minor.

Impacts to Wildlife Resources

The Proposed Action would result in a minor loss of habitat for big game species. The 28-acre enclosure may have a minor impact on local movement of some individual wild deer, elk or moose; forcing them to reroute their daily movement around the exterior enclosure fence.

Black bear and mountain lions inhabit the general area and may be attracted to the game farm due to the concentration of domestic elk and grain stored for elk feed (black bear). Both species are capable of entering the enclosure, and although live capture and removal is possible, it is not without risks. This may affect individuals but not populations. There is a possibility that wild deer and elk may enter the enclosure. Wild ungulates exposed to domestic elk would likely be destroyed rather than released back to the wild. This may affect individuals but not populations.

This area is seasonally used by waterfowl and shorebirds and the expected intensive forage utilization within the enclosure would result in minor loss of nesting cover for some species, but may provide suitable habitat for the killdeer.

Some input of nutrient enriched water runoff during snow melt and major storm events may occur, resulting in a minor change of water quality for fishes.

The proposed expansion would present a significant increase in the risk to wildlife health because:

- the site would be located in an area currently utilized by wild game;
- the high potential for soil shrink-swell and frost heaving could cause minor to heavy damage to structures and fences resulting in a perimeter fence that is not game-proof; and
- the short-term, unprotected lease agreement for land upon which the proposed game farm would be located provides inadequate assurance that game farm animals will be adequately contained in the event the lease is terminated without notice.

There is an undetermined potential of domestic elk carrying or becoming infected with a contagious wildlife disease or parasite such as tuberculosis, chronic wasting disease, or meningeal worm and then coming in

contact (through-the-fence, nose-to-nose, nose-to-soil, or ingress/egress) with wild deer, elk, or other wildlife. Release of a contagious disease in the wild could severely impact native wildlife populations. It is also possible that diseases and parasites carried by wild elk could be introduced to domestic elk with equally severe impacts.

Required Mitigation Measures

- Report ingress of any wild game animals and predators to FWP immediately. Any ingress or egress report must contain the probable reason why or how the ingress/egress occurred.
- The Licensee shall notify FWP immediately upon the termination of the Licensees' lease for the property on which the game farm is located. Ownership or lease of the land on which the game farm is located is required by statute, 87-4-426 (1) (a), MCA.

Recommended Mitigation Measures

- Properly store hay, feed and salt in enclosed containers and buildings a sufficient distance from the perimeter fence to minimize the attraction of wild animals;
- Use commonly accepted sanitation measures to remove excess feed, dead animals, and other wildlife attractants;
- Regularly patrol the fences to determine whether wild animals are gaining access to the game farm;
- Construct a fence at least 25 feet from the unnamed creek and building and build a bridge or armored walkway at the creek crossing between the quarantine facility and the proposed game farm.

SUMMARY OF PUBLIC COMMENTS AND FWP RESPONSES

Public comments for the Gerri Backes elk game farm Draft EA were accepted from July 3 through July 24, 1997. Two letters were received by FWP during the public comment period. Issues pertinent to the EA that were raised in the comment letters are summarized below.

1. **Issue:** The possible impact from spread of disease and genetic pollution to the native animals is too great to risk. An escape from the game farm is sure to happen and the risk of introducing tuberculosis or red deer genes is far too great.

Response: Wild animals such as native elk, black bears, mountain lions and coyotes can be attracted to game farms due to the availability of food and potential breeding opportunities. The EA identified risk of disease to wild animal populations as a potentially significant risk, but concluded that the risk would be mitigated to a level below significant by requiring immediate response to, and reporting of, ingress and egress events.

2. **Issue:** The risk of disease spread by local predators is commonly evident.

Response: Because predators are at the top of the food chain, most predators are considered dead end hosts if they feed on a diseased animal. Predators usually don't have contact with domestic animals and, therefore, don't have the opportunity to provide a link between one domestic animal and another. Diseases usually follow the movement of an infected animal through similar and susceptible populations.

3. **Issue:** The EA failed to indicate that the Backes game farm would have a 24-hour caretaker on-site each day of the week.

Response: Because the presence of a caretaker was not indicated in the Backes game farm application, it was not included as part of the Proposed Action. The applicant has since stated, in writing, that a caretaker would be on-site and is stated as such in the Proposed Action of the Final EA.

4. **Issue:** Report of ingress and egress is a statutory regulation and, as such, is not needed as a stated stipulation.

Response: The immediate reporting of egress events is required under FWP game farm rule ARM 12.6.1517 (2). Game farm rules currently do not require immediate reporting of ingress events to FWP.

5. **Issue:** Heavy oil well tubing will be used for the fence posts. Excess sodium does not corrode this type of material. Soil expansion and contraction should have little effect as well.

Response: Treated fence posts would be more resistant to corrosion than untreated wood posts however, any fence post imbedded in shrink/swell soils has a greater potential to become loose and result in fence failure than a fence post embedded in soils that do not expand and contract with changes in moisture content.

6. **Issue:** The recommended mitigation measure stated in the EA to incorporate waste into soil as quickly as possible by plowing or discing would totally void and deteriorate the vegetation and soil. The result would be loss of desirable forage plants and eventually enhance weed growth. I strongly oppose that recommendation.

Response: The comment is correct, incorporation of waste into pasture soil could result in the deterioration of vegetation and soil. The recommended practice of incorporating waste immediately into the soil was intended for waste treatment at a designated land application area at the proposed game farm. This recommendation is taken from the DEQ pamphlet "Guide to Animal Waste Management and Water Quality Protection in Montana, 1996".

CONCLUSION OF THE EA

The public comments did not identify impacts or provide substantial new information bearing on the environmental review which would require further analysis. Accordingly, the Draft EA, as modified herein, is approved as the Final EA. The preferred alternative is the Proposed Action, modified with two stipulations requiring the immediate reporting of ingress events and modification of the lease agreement to include a grace period for animal removal to a FWP-approved location in the event of lease termination. Based upon this review, it is determined that the Proposed Action with the required mitigation measures would not have a significant impact on the environment and that an EIS will not be required.

ANALYSIS OF IMPACT ON PRIVATE PROPERTY

Montana game farm statutes (87-4-476, MCA) require that game farm licenses may be denied or issued with stipulations to prevent unacceptable threat of escape of captive game farm animals and to prevent a significant threat to the safety of the general public and surrounding landowners and by the shooting of game farm animals. MEPA requires FWP to identify and analyze environmental impacts of the Proposed Action and potential mitigation measures. MEPA, as revised by Senate Bill 231 of 1995, also requires agencies to evaluate the impact on private property of regulatory actions, such as denial of a permit or establishment of permit conditions (75-1-201, MCA). The Environmental Quality Council (EQC) has established procedural guidelines to implement these requirements. The analysis provided in the Draft EA was prepared in accordance with implementation guidance issued by the EQC.

In addition, the Private Property Assessment Act (2-10-101, MCA, et seq.) requires agencies to determine whether proposed actions by the State of Montana have "taking or damaging implications", such as to constitute a deprivation of private property in violation of the United States or Montana constitutions and, if so, to perform an impact assessment to determine the likelihood that a state or federal court would hold that the action is a taking or damaging, to review alternatives, and to determine the estimated cost of compensation. In accordance with the Act, the attorney general has prepared guidelines, including a checklist, to assist agencies in identifying and evaluating actions with taking or damaging implications.

The Draft EA contains FWP's completed checklist with respect to the stipulation recommended in the preferred alternative and has found that the preferred alternative does not have taking or damaging implications and that an impact assessment is not required.

PERSONS RESPONSIBLE FOR PREPARING THE EA AND RESPONSE TO COMMENTS**Fish, Wildlife and Parks**

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APPENDIX A
COMMENTS RECEIVED BY FWP DURING THE PUBLIC COMMENT PERIOD